

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of Application of |) | |
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| CLARENDON FOUNDATION |) | File No. BPLIF-951020NC |
| |) | |
| For a new Instructional Television Fixed Service |) | |
| Station on the A Channel Group at Payne, Georgia |) | |
| |) | |
| BALDWIN COUNTY SCHOOL SYSTEM |) | File No. BPLIF-951020QQ |
| |) | |
| For a new Instructional Television Fixed Service |) | |
| Station on the B Channel Group at Payne, Georgia |) | |
| |) | |
| SHEKINAH NETWORK |) | File No. BPLIF-951020QR |
| |) | |
| For a new Instructional Television Fixed Service |) | |
| Station on the C Channel Group at Payne, Georgia |) | |
| |) | |
| GEORGIA COLLEGE – MACON CAMPUS |) | |
| |) | File No. BPLIF-951020PT |
| For a new Instructional Television Fixed Service |) | |
| Station on the G Channel Group at Payne, Georgia |) | |

MEMORANDUM OPINION AND ORDER

Adopted: June 24, 2003

Released: June 27, 2003

By the Commission:

I. INTRODUCTION

1. Herein, we consider four separate applications for review (AFR) filed on August 23, 1999, on behalf of Baldwin County School System (Baldwin),¹ Clarendon Foundation (Clarendon),² Shekinah Network (Shekinah)³ and Georgia College-Macon Campus (GCMC)⁴ (collectively, Applicants). Applicants seek review of letters dated May 10, 1999, denying petitions for reconsideration of the dismissal of their respective applications for new Instructional Television Fixed Service (ITFS) stations at

¹ Application for Review (filed Aug. 23, 1999) (Baldwin AFR).

² Application for Review (filed Aug. 23, 1999) (Clarendon AFR).

³ Application for Review (filed Aug. 23, 1999) (Shekinah AFR).

⁴ Application for Review (filed Aug. 23, 1999) (Georgia Macon AFR).

Payne, Georgia.⁵ Because Applicants raise essentially identical issues and because the applications request authorizations for ITFS stations in the same community, we are considering their applications for review together for administrative efficiency. For the reasons stated below, we deny all four applications for review.

II. BACKGROUND

2. On October 20, 1995, Applicants filed the captioned applications for new ITFS stations at Payne, Georgia. Subsequently, the Chief, Distribution Services Branch, Video Services Division (Division), of the former Mass Media Bureau dismissed the applications of GCMC,⁶ Clarendon, Baldwin,⁷ and Shekinah⁸ because their applications did not conform to the interference limitation requirements of Section 74.903(b) of the Commission's Rules.⁹ On August 14, 1998, the Applicants filed petitions for reconsideration of the dismissal of their applications.¹⁰ On May 10, 1999, the Division issued the *Reconsideration Letters* denying Applicants' petitions for reconsideration. On August 23, 1999, Applicants filed the instant AFRs.

III. DISCUSSION

3. The Applicants contend that they complied with the provisions of Section 74.903(b) of the Commission's Rules,¹¹ and that, in concluding otherwise, the Division misinterpreted the rule.¹² Specifically, the Applicants argue that under Section 74.903(b)(1)(i), they were not required to protect any receive site where there was a terrain obstruction in the electrical path between Applicants' proposed transmitting antenna and the receive site's antenna.¹³ With respect to the electrical paths that were not obstructed, the Applicants contend that they complied with Section 74.903(b) of the Commission's Rules¹⁴ because their interference analyses showed that the desired-to-undesired (D/U) signal ratio at the unobstructed receive sites equaled or exceeded 45 dB, in the case of co-channel sites, and 0 dB, in the

⁵ See Letter dated May 10, 1999 from Chief, Video Services Division, Mass Media Bureau to Ronald D. Maines, Esq. and Dawn G. Alexander, Esq. (*Reconsideration Letter*). Public notice of the actions was given on July 23, 1999. See MMB Broadcast Actions Public Notice Report No. 44535A (rel. Jul. 23, 1999).

⁶ The GCMC application was dismissed on April 22, 1998.

⁷ The Clarendon and Baldwin applications were dismissed on April 30, 1998.

⁸ The Shekinah application was dismissed on June 30, 1998.

⁹ In contravention of Section 74.903(b), Baldwin's proposed facilities would cause interference to Station WLX652, Jeffersonville, Georgia, licensed to West Laurens High School; Clarendon's proposed facilities would cause interference to Station WNC335, Jeffersonville, Georgia, licensed to Laurens County Schools; GCMC's proposed facilities would cause interference to Station WLX867, Madison, Georgia, licensed to Newton County School System and Station WLX666, Jeffersonville, Georgia, licensed to Twiggs County Middle School.; and Shekinah's proposed facilities would cause interference to Station WLX695, licensed to Bleckley County Schools.

¹⁰ See Petitions for Reconsideration filed by Baldwin, Clarendon, and GCMC (filed May 29, 1998).

¹¹ 47 C.F.R. § 74.903

¹² See Baldwin AFR at 2-3; Clarendon AFR at 2-4; GCMC AFR at 2-3; Shekinah AFR at 2-4.

¹³ See Baldwin AFR at 2-4; Clarendon AFR at 2-5; GCMC AFR at 2-4; Shekinah AFR at 2-5.

¹⁴ 47 C.F.R. § 74.903(b).

case of adjacent channel sites.¹⁵ The Applicants allege that the *Reconsideration Letters* offered no meaningful explanation of why their interpretation of the rules was incorrect.¹⁶

4. We agree with Applicants' characterization of the relevant rule; however, Applicants' argument begs the essential question of whether Applicants complied with the rule's requirements that: (1) all relevant receive sites¹⁷ must be included in the interference analysis; and (2) the applicant must demonstrate that the co-channel and adjacent channel interference criteria are met with respect to all unobstructed receive sites and with respect the unobstructed protected service area of other ITFS stations. In a *de novo* review of the applications, we have confirmed that they warranted dismissal for the reasons set out in the initial dismissal letters. Specifically, we find the Applicants' interference analyses demonstrably deficient with respect to both components of Section 74.903(b)(1): (1) all relevant receive sites and protected service areas were not included in the analyses; and (2) errors were made in calculating the D/U co-channel ratio at certain unobstructed receive sites and within the protected service area of other ITFS systems. What follows is a discussion of the specific deficiencies found for each application.

5. **Clarendon.** We conclude that Clarendon failed to include complete and accurate interference analyses. For example, Clarendon failed to analyze a receive site registered to Station WNC335 at coordinates 33° 01' 33" N. Lat. and 83° 55' 23" W. Long. Commission staff analysis shows that there is line of sight between Clarendon's proposed transmitter site and the Station WNC335 receive site, and that the D/U ratio at that receive site is 31.5 dB – 13.5 dB less than the 45 dB co-channel interference criterion. Both Clarendon's and our staff's engineering analysis show that there is line of sight between Clarendon's proposed transmitter site and the Station WNC335 receive site located at 32° 48' 25" N. Lat. and 83° 28' 37" W. Long.¹⁸ However, Clarendon incorrectly computed the co-channel D/U ratio at the Station WNC335 receive site, and concluded that the ratio would be 46.0 dB,¹⁹ thus meeting the 45 dB co-channel interference criterion. Our staff's engineering analysis, conducted in accordance with the procedures set forth in Section 74.903 of Commission's Rules,²⁰ shows that the D/U ratio is 38.1 dB – 6.9 dB less than the 45 dB co-channel interference criterion.

6. Moreover, we note that Clarendon's application is internally inconsistent with respect to calculation of Effective Isotropic Radiated Power (EIRP). On Page 9 of FCC Form 330, paragraph 2, question (r), Clarendon calculated the EIRP as 20.1 dBw (102 Watts). However, in Exhibit E1-3 of its application, Clarendon calculated the EIRP as 49.1 dBm (81 Watts). Clarendon's interference analyses used the latter EIRP. Based on the information contained in Clarendon's application, it is not possible to resolve the discrepancy. Thus, we are unable to rely on the D/U ratio calculations contained in Clarendon's interference analysis. We conclude, therefore, that the multiple errors in Clarendon's application rendered it defective and that it was properly dismissed pursuant to Section 74.903(b).

¹⁵ See Baldwin AFR at 4-5; Clarendon AFR at 4-5; GCMC AFR at 4; Shekinah AFR at 4-5.

¹⁶ Baldwin AFR at 4; Clarendon AFR at 5; GCMC AFR at 4; Shekinah AFR at 4.

¹⁷ At the time Applicants filed their applications, the rule required "an analysis of the potential for harmful co-channel interference with any authorized or previously proposed station if: (i) [t]he proposed transmitting antenna has an unobstructed electrical path to receive site(s) of any other station(s) that utilize(s), or would utilize, the same frequency, or (ii) [t]he proposed transmitter is within 80.5 km (50 miles) of the coordinates of any such station." 47 C.F.R. § 74.903(b)(1) (1995).

¹⁸ Clarendon Application, Exhibit E6-1 at 1 (site R16).

¹⁹ *Id.*

²⁰ 47 C.F.R. § 74.903.

7. **Baldwin.** We conclude that Baldwin failed to include complete and accurate inference analyses. For example, Baldwin failed to consider a co-channel receive site registered to Station WLX652 at coordinates 33° 01' 33" N. Lat. and 83° 55' 23" W. Long. Our staff analysis shows that there is line of sight between Clarendon's proposed transmitter site and the Station WLX652 receive site, and that the D/U ratio at that receive site is 19.6 dB – 25.4 dB less than the 45 dB co-channel interference criterion. Moreover, with respect to three other receive sites registered under the license for Station WLX652, Baldwin miscalculated the D/U ratio. Our staff's engineering analysis shows that, contrary to Baldwin's contentions, the D/U ratios at those receive sites are less than 45.0 dB.²¹ Also, as with Clarendon's application, there is an internal inconsistency in calculation of the EIRP of the proposed Baldwin station. We conclude, therefore, that the multiple errors in Baldwin's application rendered it defective and that it was properly dismissed pursuant to Section 74.903(b).

8. **Shekinah.** We conclude that Shekinah failed to include complete and accurate interference analyses. For example, Shekinah failed to analyze a receive site registered to Station WLX695 at coordinates 33° 01' 33" N. Lat. and 83° 55' 23" W. Long. Commission staff analysis shows that there is line of sight between Shekinah's proposed transmitter site and the Station WLX695 receive site, and that the D/U ratio at that receive site is 31.5 dB – 13.5 dB less than the 45 dB co-channel interference criterion. Both Shekinah's and our staff's engineering analysis show that there is line of sight between Shekinah's proposed transmitter site and the Station WLX695 receive site located at 32° 48' 25" N. Lat. and 83° 28' 37" W. Long.²² However, Shekinah incorrectly computed the co-channel D/U ratio at the Station WLX695 receive site, and concluded that the ratio would be 46.0 dB,²³ thus meeting the 45 dB co-channel interference criterion. Our staff's engineering analysis, conducted in accordance with the procedures set forth in Section 74.903 of Commission's Rules,²⁴ shows that the D/U ratio is 38.1 dB – 6.9 dB less than the 45 dB co-channel interference criterion. We conclude, therefore, that the multiple errors in Shekinah's application rendered it defective and that it was properly dismissed pursuant to Section 74.903(b).

9. **GCMC.** We conclude that GCMC failed to demonstrate that the D/U co-channel ratio at certain unobstructed receive sites complied with the applicable requirements. For example, Commission staff's interference analysis shows that, on the 310 degree radial from the Station WLX666 licensed transmitter site, there is line of sight to locations within the Station WLX666 protected service area that would receive interference from GCMC's proposed facilities. The path from GCMC's site to these locations is unobstructed. Similarly, on the 20 and 190 degree radials from the Station WLX867 licensed transmitter site, there is line of sight to locations within the Station WLX867 protected service area that would also receive interference from GCMC's proposal. The paths from GCMC's site to these locations are also unobstructed. At all of these locations, the D/U ratio is less than 45 dB.²⁵ We conclude,

²¹ The receive sites in question are: (1) the site at coordinates 32° 37' 04" N. Lat., 83° 36' 54" W. Long. (Baldwin calculated the D/U ratio as 46.6 dB; FCC analysis shows the D/U ratio is only 37.8 dB); (2) the site at coordinates 32° 41' 12" N. Lat., 83° 21' 13" W. Long. (Baldwin calculated the D/U ratio as 50.7 dB; FCC analysis shows the D/U ratio is only 42.7 dB); and (3) the site at coordinates 32° 48' 25" N. Lat., 83° 28' 37" W. Long. (Baldwin calculated the D/U ratio as 46.0 dB, FCC analysis shows the D/U ratio is only 33.1 dB).

²² Shekinah Application, Exhibit E6-1 at 1 (site R16).

²³ *Id.*

²⁴ 47 C.F.R. § 74.903.

²⁵ In addition, the staff's analysis shows that GCMC also failed to protect registered receive sites of Station WLX666. GCMC failed to analyze a receive site registered to Station WLX666 at coordinates 33° 01' 33" N. Lat. and 83° 55' 23" W. Long. Our analysis shows that there is line of sight between GCMC's proposed transmitter site

therefore, that GCMC's application was defective and that it was properly dismissed pursuant to Section 74.903.

10. In sum, contrary to Applicants' contentions, there is no interpretation of Section 74.903 of the Commission's Rules that would render Applicant's applications acceptable. The Division properly interpreted the plain meaning of the rule and concluded to bar acceptance of applications that contained multiple defects in their interference analyses.

11. Finally, we reject Applicants' arguments that any interference caused to the affected stations is moot because the affected stations have never functioned as *bona fide* ITFS stations.²⁶ The licenses of the affected stations were valid at the time the Applicants filed their applications. Because ITFS applications must be filed only during designated filing windows,²⁷ it is vital that applicants demonstrate compliance with the pertinent interference criteria as of the time they file their application. Applicants may not ignore the interference protection criteria in Section 74.903 of the Commission's Rules²⁸ in the hope that the Commission will later cancel or revoke the licenses of affected stations. We note that Applicants did file petitions to revoke the licenses of the affected stations. However, those petitions were filed well after Applicants' applications were dismissed as defective. For reasons of administrative efficiency alone, the Commission cannot countenance the acceptance of applications with defects which may – or may not – be cured by the happening of conditions subsequent. Thus, in a parallel context, the Commission has said, “[w]e cannot allow a party to ‘sit back and hope that a decision will be in its favor and, when it isn’t, to parry with an offer of more evidence. No judging process in any branch of government could operate efficiently or accurately if such a procedure were allowed.’”²⁹ Therefore, we conclude that Applicants' filing of petitions to revoke did not excuse their failure to comply with the interference protection requirements contained in Section 74.903(b) of the Commission's Rules.

IV. CONCLUSION

12. The multiple omissions and miscalculations in Applicants' interference analyses rendered the underlying applications defective. The staff's dismissal of the applications was compelled by Section 74.903(b) of the Commission's Rules³⁰ and was legally and procedurally correct in all respects. Accordingly, we deny the instant applications for review.

V. ORDERING CLAUSE

13. Accordingly **IT IS ORDERED** that pursuant to Sections 4(i) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 155(c), and Section 1.115 of the Commission's Rules, 47 C.F.R. §1.115, the Applications for Review filed by Baldwin County School

and the receive site, and that the D/U ratio at that receive site is 31.5 dB. Also, with respect to a receive site located at 32° 48' 25" N. Lat. and 83° 28' 37" W. Long., while GCMC's analysis indicates that the D/U ratio would be 46.0 dB, the staff's engineering analysis determined that the D/U ratio was 38.1 dB.

²⁶ Baldwin AFR at 5; Clarendon AFR at 6; GCMC AFR at 5; Shekinah AFR at 5-6.

²⁷ See Amendment of Part 74 of the Commission's Rules with Regard to the Instructional Television Fixed Service, *Report and Order*, MM Docket No. 93-24, 10 FCC Rcd 2907 (1995).

²⁸ 47 C.F.R. § 74.903.

²⁹ See Canyon Area Residents, *Memorandum Opinion and Order*, 14 FCC Rcd 8153, 8154 ¶ 7 (1999), quoting *Colorado Radio Corp. v. FCC*, 118 F.2d 24, 26 (D.C. Cir. 1941).

³⁰ 47 C.F.R. § 74.903.

System, Clarendon Foundation, Georgia College-Macon Campus, and Shekinah Network on August 23, 1999 **ARE DENIED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary